



DEPARTMENT OF THE ARMY
MISSISSIPPI VALLEY DIVISION, CORPS OF ENGINEERS
P.O. BOX 80
VICKSBURG MS 39181-0080

September 6, 2005

REPLY TO
ATTENTION OF

Executive Office

2497

Mr. Don Hultman
Upper Mississippi River
National Wildlife and Fish Refuge
ATTN: CCP Comment
Room 101
51 East Fourth Street
Winona, Minnesota 55987


Dear Mr. Hultman:

I refer to your recent letter requesting review and comment on the U.S. Fish and Wildlife Service's Draft Environmental Impact Statement and Comprehensive Conservation Plan for the Upper Mississippi River National Wildlife and Fish Refuge.

My staff, along with the staff of the St. Paul, Rock Island, and St. Louis Districts, has reviewed the draft document. Our consolidated comments are attached (enclosure 1). If you have any questions regarding these comments, please contact Mrs. Susan Smith of my staff at telephone number (601) 634-5827.

We appreciate the opportunity to participate with the U.S. Fish and Wildlife Service in this process. We look forward to a continued positive relationship as our agencies collaboratively work to improve the ecosystem of the Upper Mississippi River National Wildlife and Fish Refuge.

Sincerely,


Mark L. Mazzanti
Deputy Director, Programs
Directorate
Engineer in Charge

Enclosure

Comments from the
Mississippi Valley Division,
St. Paul District, Rock Island District, and St. Louis
District
on the
U.S. Fish and Wildlife Service
Comprehensive Conservation Plan and
Environmental Impact Statement for the
Upper Mississippi River National Wildlife and Fish Refuge,
May 2005

General Comments:

1. The Comprehensive Conservation Plan/Environmental Impact Statement (CCP/EIS) presents a conceptual plan for sound stewardship and adaptive management.
2. This plan also underscores the importance of a continuing partnership between the U.S. Fish and Wildlife Service (USFWS), the Corps of Engineers (COE), and the adjoining states in the exercise of our mandates and responsibilities. Mutual participation and resolution of issues is necessary in the interest of the Upper Mississippi River's resources and values to the nation.
3. Given the four alternatives presented in the CCP/EIS, Alternative D is the best alternative. It provides a reasonable and balanced approach between protecting critical natural resource and refuge values and recreational use by the public.
4. The cooperative agreement is the only document that officially addresses the management relationship between the COE and the USFWS. Within the agreement, it is clear that COE did not grant unilateral authority to the USFWS for management of COE owned lands and the public use that occurs on them. Management jurisdiction was given to the USFWS with reservations. Provided USFWS obtains COE concurrence, the cooperative agreement does not prevent USFWS from implementing any plan or program for the Upper Mississippi River National Wildlife and Fish Refuge System, including restrictions over areas currently under COE authority pursuant to the agreement. We believe concurrence can be obtained on most of the proposals outlined in the preferred alternative D.

5. The recommended alternative in the CCP/EIS includes expansion of closed areas, elimination of permanent duck blinds, management of beach areas, and the establishment of no-wake areas. All are topics that will affect recreational use on lands held in fee title by the COE and incorporated into the cooperative agreement. We believe that public use must be addressed in a cooperative manner with the USFWS, the COE, the state resources agencies, etc. Final decisions on cooperative agreement lands, rather than being made unilaterally by the USFWS, will be made in coordination with the COE in the many forums that exist for such discussion and decision making. Once decisions regarding public use are made cooperatively, then we will support the USFWS in the implementation of the resulting plan.

6. Some of the refuge goals which require the participation and cooperation of the COE, such as boundary marking, pool planning, and drawdowns, are very optimistic given current levels of funding and manpower.

7. All alternatives identified in the CCP/EIS require substantial contributions from other Federal agencies and private groups to achieve each alternative's goals. In addition, Alternatives B, C, and D also require a significant increase in USFWS annual funding for the refuge (i.e., increased rate of land acquisition, new offices and/or maintenance facilities, increased personnel from 37 full-time equivalent (FTE) employees to 54.5 FTE for Alternatives B and C and 56.5 FTE for Alternative D, etc.). Given the current constraints on discretionary spending in the Federal budget, it is not apparent that the USFWS can successfully achieve each alternative's goal if it does not have the personnel needed to coordinate with other agencies, the personnel needed to enforce changed public use regulations, the funds for increased land acquisition, etc. Based on these fiscal concerns, we suggest a prioritized implementation strategy be included which recognizes the potential for funding and manpower constraints.

8. Although the USFWS states that it is committed to the protection of cultural resources, cultural resources management concerns should be articulated much earlier in the document. Consider including the protection of cultural resources as a separate issue within the Landscape category of the Refuge's goals.

9. Throughout the document, the need for bluff land protection and acquisition is cited. Yet an examination of the legislation that established the refuge indicates that lands "which are subject to overflow by such river" should be acquired. Therefore, it is unclear under which authority the USFWS will acquire the bluff land.

10. We request that USFWS use "Placement Site" rather than "Disposal Site" when referring to dredged material placements sites. Also, we noticed that some of the placement sites are identified and some are not. COE maps from the Channel Maintenance Management Plan could be referenced for locations of all sites. (The Rock Island District COE does not have completed Channel Maintenance Management Plans at this time.)

11. The terms "disposal" and "spoil" are used throughout the CCP. Use of the terms "placement site" and "material" is requested to be consistent with current documents and long-time Corps program terminology.

12. Revisions to the CCP/EIS resulting from Corps of Engineers (COE) comments should be reflected in the Summary of the Draft EIS, the CCP/EIS, and the separate Executive Summary document.

Specific Comments:

Page	Paragraph	Comment
10	Section 1.4.3	This section does an excellent job of summarizing the relationship of the COE and USFWS coordination efforts on the river. In general, the CCP makes many references to controlling public use on land within the refuge and on the water for such things as motorless areas, slow/no wake zones, and waterfowl sanctuaries. Many of the historic public uses on both land and water would be impacted by this plan. As a result, we recommend that Section 1.4.3 be expanded to include a summary of a partnership process that would be used to finalize these new policies. This section already acknowledges the congressionally authorized multi-purpose uses of the Upper Mississippi River, but needs to be strengthened concerning the resultant need for intensive interagency coordination in river wide management decisions.
11	Section 1.4.3, paragraph 4, 1st sentence	The referenced sentence reads, "In summary the cooperative agreement grants to the Service, the rights to manage fish and wildlife and their habitat on those lands acquired by the Corps." We believe, "In summary the cooperative agreement, with some reservations, grants to the Service, the rights to manage fish and wildlife and their habitat on those lands acquired by the Corps" is more accurate and therefore should replace the referenced sentence.
11	Section 1.4.3, paragraph 4, 2nd sentence	The sentence, "These lands are considered part of the Refuge and the National Refuge System" should be changed to read, "These lands are managed by the Service as a part of the Refuge and the National Wildlife Refuge System." This revised sentence reflects a more accurate

		statement of the USFWS' role for these lands.
11	Section 1.4.3, paragraph 5, 2nd to last sentence	The COE is not aware of any cases that prohibited placement of dredged material on lands within Wisconsin or Minnesota. However in accordance with the Clean Water Act of 1977, the COE routinely applies for permits from the states for discharge of material.
12	LUAP paragraph	Based on the statement "Both Land Use Allocation Plans remain important references..." we assume that the LUAP's are not superseded by the CCP and remain in effect, with acknowledgement that they need to be updated as stated in Appendix L, Goal 1.
15-16	Section 1.4.3.3	Interagency Reports and Assessments: Add the Navigation Study: <i>FINAL Integrated Feasibility Report and Programmatic Environmental Impact Statement for the UMR-IWW System Navigation Feasibility Study</i> , 24 September 2004, US Army Corps of Engineers, Mississippi Valley Division, Vicksburg, MS, 652 pages. Also this reference should be added to the list in Chapter 8.
15-16	Section 1.4.3.3	Interagency Reports and Assessments: Add the Biological Opinion for the Navigation Study: <i>FINAL BIOLOGICAL OPINION for the Upper Mississippi River-Illinois Waterway System Navigation Feasibility Study</i> , August 2004, U.S. Fish and Wildlife Service, Rock Island Field Office, Rock Island, IL, Marion Suboffice, Marion, IL, and Twin Cities Field Office, Bloomington, MN, 141 pages. Also this reference should be added to the list in Chapter 8.
17	Section 1.4.4.2	Refuge Goals: Add a goal that would support "Navigation - Under the Cooperative Agreement with the U.S. Army Corps of Engineers, those areas of the cooperatively managed lands to

		allow for operation and maintenance of the 9-foot navigation channel, including but not limited to placement of dredged material and regulating structures."
18 and 133	Section 1.4.5.1 and Table 1, Objective 1.1	<p>Refuge Boundary: The refuge boundary is an elusive concept unless it is designated on maps and/or posted on the land/water. Surveying and posting the entire Refuge boundary (both COE and FWS fee title) is very ambitious and will be costly. A more attainable goal might be to survey and post 100% of areas where potential for encroachment exists. Funding could be a joint effort.</p> <p>The 1983 (Pools 1-10) and 1986 (Pools 11-14) LUAPs clearly note the refuge boundary, including both water and land. Appendix P mapping does not show a refuge boundary. Since the LUAP is still considered in effect, then perhaps refuge boundary mapping is not necessary in the CCP.</p>
19-23	Sections 1.4.5.1, 1.4.5.2; or 1.4.5.3	Under Landscape, Environmental Health, or Wildlife and Habitat Issues, add a heading and paragraph supporting opportunities to use dredged material to add topographic diversity to restore elevations and soil moisture or drainage conditions supporting floodplain island and/or upland floodplain forest habitats.
20	Section 1.4.5.3	Under Threatened and Endangered Species, identify the other federally listed species which occur in the adjoining areas, although they may not have been confirmed to occur on the refuge (e.g., Indiana bats). Identify those species which have been confirmed to occur in the surrounding counties.
23	Section 1.4.5.4	Management of Waterfowl Sanctuary Areas (Closed Areas): The COE supports allowing the USFWS to manage closed areas and backwater surface

		<p>area within the boundaries of the refuge to insure the integrity of refuge values and purpose, as long as "Navigation Servitude" for main channel utilization is protected for commercial and recreational boat traffic. An ever increasing number of recreational watercraft and watercraft users will ultimately determine the USFWS' success in controlling recreational watercraft access to backwater areas. A reasonable approach is encouraged to assure success.</p>
25	Section 1.4.5.4	<p>Permanent Blinds on Savanna District: The COE concurs that permanent blinds need to be phased out. The phase-in "plan of action" for the Potter's Marsh hunt seems a logical progression of policy to provide more equitable hunting opportunities, as well as to eliminate a source of debris that finds its way onto public lands as a result of current permanent blind policies.</p>
26 and 140	Section 1.4.5.4 and Table 1, Objective 4.9	<p>Fishing tournaments: The COE requires that fishing tournaments have special events permits only when a COE administered recreational facility or boat ramp is impacted. Specifics can be found at http://www.missriver.org under the Special Events Policy section. The COE has no authority to issue permits for fishing tournaments originating from facilities not directly managed by the COE. We view this as an issue to be controlled by other political entities involved in fisheries management and enforcement such as the USFWS or the appropriate state authority.</p> <p>We do believe, however, that the COE and USFWS should cooperate on a coordinated response to fishing tournaments, as well as special</p>

		<p>events such as beach parties. Joint news releases with background and contact information could be made. Events based out of Corps/leased landings and/or on non-refuge project areas should use the same procedures as USFWS and state Departments of Natural Resources to reduce multiple permitting requirements. This is another item that should be coordinated through the partnership agencies.</p>
27-28 and 142	Section 1.4.5.5 and Table 1, Objective 5.1	<p>Beach Use Policy: This is an aggressive and perhaps overly ambitious plan and one that is unenforceable without significant enforcement presence. See http://www.missriver.org , the Special Events Policy section, for the COE's effort to control large group events on dredge material placement sites. That policy was developed as a result of interagency coordination meetings that took place in 1987 and 1988.</p> <p>On COE fee title lands, closing a beach and/or implementing new regulations would require approval of the appropriate COE District Engineer and/or Division Engineer. The cooperative agreement does not out-grant this authority to USFWS. Also, the LUAP is dated concerning recreation low density designated beaches. (See comment above on page 12, LUAP paragraph.)</p> <p>The COE believes that problems associated with beaches should be resolved through an interagency partnership effort that involves all stakeholders and customers.</p>
27-28 and 142	Section 1.4.5.5 and Table 1,	<p>Beach Maintenance Policy: The COE believes that recreational use of beaches should be a secondary consideration to the development and</p>

	Objective 5.1	<p>maintenance of sites for dredge material placement. Recreational use is a secondary outcome with dredge material placement remaining the primary goal. The COE retains the right pursuant to the Navigational Servitude and with appropriate permits to place dredged material on any federal fee title land or private land where placement is above the Ordinary High Water Mark.</p> <p>COE regulations require that recreational beaches "shall be maintained in a physically safe and efficient manner, including maintaining appropriate gradient, beach nourishment, adequate buoys, proper signing and water monitoring". In a riverine environment such as the Mississippi River, where the majority of dredge material placement sites are in remote areas, maintaining sites in a manner required by regulation is not reasonable from either a cost or liability stance. The closer dredge material placement comes to being described as "recreational beach development," the greater is the responsibility and liability for the safety of the public using these sites. The placement sites should not be referred to as recreational beaches as that implies a standard of care that is absent on the river due to river conditions, manpower, and funding.</p> <p>Instituting a fee for beach use may have unintended consequences. Under the recreational use statutes that all states in the refuge have, landowners, including the Federal government, are not liable for injuries resulting from simple negligence on recreational land made</p>
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		<p>available free of charge. Liability only exists for willful or malicious behavior. If a fee is charged, this immunity may disappear.</p> <p>(Recreational use statutes are state law and will vary with the jurisdictions involved.)</p>
27-29	Section 1.4.5.5	<p>Boat ramps, pull-offs, and other access development: The USFWS has what appears to be an aggressive and logical plan for site development and expansion of access opportunities. Opportunities for the USFWS to assume responsibility for a number of recreational access sites currently managed by the COE within the Upper Mississippi River National Wildlife and Fish Refuge may arise. Reduction in future commitment to primitive recreational facilities as a result of foreseen funding issues, as well as a realignment of COE priorities, may require divestiture of COE administered select sites. The USFWS may have an interest in managing and developing these sites as important refuge access points.</p>
28 and 142	Section 1.4.5.5 and Table 1, Objective 5.3	<p>Backwater Areas: The St. Paul District has one Limited Development Area (Pool 8) and the Rock Island has no Limited Development Areas that will be adversely affected by the establishment of the proposed non-motorized backwater areas. However, a travel corridor should be provided as has been done in the other pools. The COE would prefer that the USFWS work in partnership with the COE and the state and local governments in establishing No Wake Zones. After these are collaboratively established, the USFWS and state resource agencies with enforcement roles should manage these non-motorized backwater areas within the boundaries of the refuge to ensure integrity of refuge values and</p>

		purpose.
29	Section 1.4.5.6	Under Administration and Operations Issues, recognize that portions of the refuge are used for commercial navigation in the main channel and recreational navigation in the main channel, side channels, and backwaters. Annual tonnages, and numbers of tows/barges, and the commodities moved are available, as are the number of towing companies, navigation industries, and grain, coal, and other commodity terminals which depend upon continuation of navigation through and over refuge lands/waters.
37 and 134	Objective 2.2 and Table 1, Objective 2.2	<p>Water level management: The COE's primary purpose of navigation must be maintained. Because of this, we have experienced a 2-3 year planning process for water level management (WLM) projects. Drawdowns have a dramatic impact on the channel maintenance program, including the availability of funds and the availability of equipment and storage space in designated placement sites. The USFWS should continue to work with the COE on the COE Channel Maintenance Program to identify long-term plans that facilitate dredging and dredged material placement associated with the pool scale drawdowns.</p> <p>Drawdowns may not be operationally feasible in every pool. Some pools may need additional dredging to implement the drawdown and even with additional dredging may not yield the desired environmental benefits. Interagency work groups have not yet proven that drawdowns are environmentally beneficial and worthwhile in every pool. We need to investigate the opportunities for drawdowns, however, drawdowns should</p>

		be implemented as needed ecologically rather than by establishing a standard timeframe.
39, 59, 84, and 109	Goal 3, Objective 3.1, second bullet	While we appreciate the collaborative working relationship between the COE and the USFWS during the planning, design, and implementation of the Environmental Management Program (EMP), this bullet seems to imply that the USFWS will lobby Congress for additional funding for the EMP. Suggest this wording be revised to eliminate this implication.
133	Table 1, Objective 1.4	Research Natural Areas and Special Designations: Concur with CCP strategy to coordinate management plans for Research Natural Areas (RNA) with states and other Federal agencies (including Corps) by 2010 and Ramsar designation by 2008. The Corps looks forward to this coordination, especially for those Corps fee-owned lands within the RNAs and the proposed Ramsar area. Natural areas need to be re-identified. For example, Goose Island area is designated as a natural area in the LUAP, but is programmed to be converted to forest.
133-147	Tables 1 & 2	Alternatives, especially any new Alternative E, need to recognize, support, and facilitate navigation as a national Federal priority on the Upper Mississippi River System. The CCP should include corresponding general and specific Upper Mississippi River Wildlife and Fish Refuge goals and objectives to support the COE and other navigation interests as landowners and neighbors to refuge land.
134	Table 1, Objective 2.3	Invasive Plants: Another suggested strategy would be to continue coordination with the COE regarding efforts to control invasive forest plants on COE fee lands through the COE operations and maintenance

		program and other potential authorities.
135	Table 1, Objective 3.1	Environmental Pool Plans: We recommend the table of 'Refuge Priority Locations and Actions that Contribute to Implementation of Environmental Pool Plans, 2005-2020' also include goals to complete forest inventory on USFWS fee lands in pools 5, 9 and 10. Also recommend that CCP narrative include a thorough explanation of the partnering aspects of pool plan implementation (i.e., funding source for various implementation tools may actually be the responsibility of a separate agency and subject to budget priority limitations beyond the control of the USFWS). We would also recommend that a strategy be added for the USFWS to seek opportunities to work with the COE Channel Maintenance Program to facilitate implementation of the Environmental Pool Plans.
135	Table 1, Objective 3.2	Guiding Principles for all habitat management programs: While guiding principles may provide consistency among the four USFWS Districts, they will need to be used in conjunction with principles from other agencies when working joint projects. Some flexibility may be needed depending on the project. Although the guidelines are excellent goals, principle #1 is written in a way that seems to limit any possibility for some traditional habitat management options, such as moist soil management and use of water control structures. We suggest clarifying this item.
137	Table 1, Objective 3.9	Forest Management: We commend the Service on their proposal to hire a refuge forester. However, this level of staffing is low in relation to the amount of forested resource on USFWS fee lands. By comparison, the COE

		allocates approximately 4.5 FTE toward forest management on their fee lands within the Upper Mississippi River Wildlife and Fish Refuge. We suggest that additional staff support be considered to more effectively address forest management needs.
138	Table 1, Objective 4.2	Waterfowl hunting, closed areas and sanctuaries: Restricting watercraft from entry into any part of the Mississippi River System would require the concurrence of the appropriate Corps District Engineer and/or Division Engineer and quite possibly the state governments. Proposals such as this should be implemented through a partnership program involving the Corps and state Departments of Natural Resources similar to what has been done with WLM projects. The proposed 32 acre closed area expansion in pool 8 south of Wildcat Park may impact COE shoreline use permit holders. Shoreline access should be considered in all proposed closed areas. Consideration should be given to allowing boats but limiting horse power.
140	Table 1, Objective 4.10	Wildlife Observation and Photography: The CCP includes good strategies for this objective. We encourage seeking partnering opportunities to include COE developed and/or out-granted areas.
141	Table 1, Objective 4.12	Fish Floats: Fish floats have been in existence for many years and are heavily used by the public. Non-compliance issues should be addressed, however, the effort should concentrate on bringing the floats into compliance in lieu of phasing out operations. If a fish float does not, or will not comply, it should be removed and the space offered to another concessionaire that will comply. The floats provide a unique

		fishing opportunity for those without watercraft to access good fishing areas.
144	Table 1, Objective 6.2	Public Access Facilities: Additional access facilities in areas of need are good, especially walk-in access since there are very few of them.
241	Section 3.4.3	Commercial Use of Refuge: Commercial navigation is barely noted as "passes through the Refuge." This statement supports the co-existence of two Congressionally recognized systems - navigation and ecosystems. Recommend that a statement be added to acknowledge that commercial navigation activities such as barge mooring and fleeting occur along the main channel border, and that some of this activity is within the refuge boundary.
Pg 245-247;249;293	Sections 3.5; 4.2.2; and 6.2	As an important part of the Nation's heritage, the need to preserve the known cultural sites and to identify sites on Federal lands is mandated by Federal preservation laws. The Refuge contains hundreds, if not thousands, of cultural resource sites reflecting approximately 12,000 years of continual human occupation along the Upper Mississippi River. These signatures of the human legacy along the Upper Mississippi Refuge are an integral quality of the Refuge's landscape and their protection should receive equal footing with the USFWS' mandate to protect fish, wildlife and plant resources. Specifically, a variety of the proposed actions (e.g., construction of hiking trails, access areas, observation platforms, new facilities, etc.) detailed in each alternative have the potential to impact a diverse array of cultural resources, such as precontact artifact scatters, burial mounds and villages, historic trading posts, shipwrecks, and standing structures.

		<p>Since the preferred plan and the alternative plans discussed in the report have the potential to impact cultural resources, the EIS and the implementation of the preferred plan would have benefited from USFWS action to execute a Programmatic Memorandum of Agreement, as promulgated by the National Historic Preservation Act, as amended. This would have identified the participating, affected, and executing parties which have an interest in historic properties on the Upper Mississippi River, afforded protection to undocumented historic properties, and facilitated the implementation of the preferred plan as an authorized program.</p>
245	Section 3.5, 1 st paragraph	<p>Correction: Paleo age materials (e.g., Quad/Chesrow points) are present within the Refuge (Pool 10). See Kolb and Boszhardt 2004. A <i>Geomorphological Investigation and Overview of Navigation Pool 10, Upper Mississippi River</i>. Reports of Investigations No. 456. Mississippi Valley Archaeology Center, La Crosse. Report submitted to the U.S. Army Corps of Engineers, St. Paul District.</p>
245	Section 3.5	<p>The importance of the Upper Mississippi River and its role in the development of Amercianist archaeology should be mentioned. Some of the pioneering antiquarians mapped hundreds of mound sites and prominent archaeologists worked at several sites along the Upper Mississippi River, such as at Stoddard and Effigy Mounds National Monument. This helped to establish some of the baseline cultural chronologies of the Upper Midwest. Ongoing research along the Upper Mississippi River and within the</p>

		<p>Refuge continues to shape the discipline (e.g., the efforts to understand geomorphic processes and investigate deeply buried sites).</p> <p>Some quantification of cultural resources within the Refuge should be included, such as the number of known sites, site types and functions, eligible sites, historic districts, etc.</p> <p>Some of the cultural resource management challenges should be mentioned, such as erosion, deeply buried sites, artifact looting, etc.</p> <p>It should also be noted that many proposed actions may mutually benefit both cultural resources and environmental rehabilitation and wildlife habitat.</p>
255	4.3.3	Alternative A: The last sentence in this section should be revised to read "...maintaining navigation capability through channel dredging, river impoundment, and training structures." Training structures include wing dams, closing dams, etc.
293	Section 6.2	Add COE (St. Paul, Rock Island, and St. Louis Districts) to distribution list.
296	Section 6.3	Add Wisconsin Historical Society to list of State agencies.
311	Appendix A	Consider adding Cultural Resources to the Glossary.
589	Appendix L, Section 8	Partnerships: While the Action sections discuss cooperative projects with the Corps, the Partnership section could be strengthened with a discussion of the need to aggressively pursue improvements to coordination and communication efforts. All parties working in the refuge need to know what is happening around them, learn from each other, and work better together (e.g., EMP,

		Navigation and Environmental Sustainability Program, etc.) to avoid duplication of effort and maximize implementation of projects/actions. The River Resources Forum and River Resources Coordinating Team and sub-committees are good examples of what is "ongoing" coordination. This coordination/work should be spelled out specifically because many people do not realize all the ongoing efforts that exist.
Appendix P		All alternatives: Mapping which shows the Sunfish Lake and Mud Lake EMP projects in lower Pool 11 as proposed should be corrected. Sunfish Lake had been constructed. Mud Lake is under construction at this time.